

(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles

<p>Counsel For The State Bar</p> <p>Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 228137</p>	<p>Case Number (s)</p> <p>06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315; 07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686; 08-O-11215 - DFM</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>FEB 02 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Susan L. Margolis Margolis &amp; Margolis 2000 Riverside Drive Los Angeles, CA 90039</p> <p>Bar # 104629</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Eugene Wellington Matthews</p> <p>Bar # 161396</p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 9, 1992.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 30 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
  - costs to be paid in equal amounts prior to February 1 for the following membership years: FOUR BILLING CYCLES FOLLOWING THE EFFECTIVE DATE OF THE SUPREME COURT ORDER.  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. At the time of the found misconduct, Respondent had at least 12 years of discipline-free practice. This is a significant factor in mitigation (Hawes v. State Bar (1990) 51 Cal.3d 587, 596 [ 10 years discipline-free practice]; Std. 1.2(e)(i).)
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has been cooperative in these proceedings and entered into a stipulation. He also acknowledged his misconduct, recognized his wrongdoing and admitted culpability. (Std. 1.2(e)(v).)
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. Respondent suffered from depression which adversely impacted his practice from 2004 through 2007. That, combined with the stress of running a solo practice culminated in his experiencing heart-attack-like pains in 2006, necessitating hospitalization. Respondent's depression resulted in his heavy reliance on an inadequately small office staff. Thus, causing the management of his practice to become substantially impaired. (Std. 1.2(e)(iv).) Unfortunately, Julio Calvo, his paralegal, stole money from his office from August 1, 2005 through November 30, 2007. This betrayal was shocking and disturbing to Respondent. After discovering the theft, Respondent reported Calvo's acts to the police and Calvo was subsequently prosecuted and convicted for felony grand theft and forgery. These emotional difficulties are recognized factors in mitigation. (In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233; In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.)

- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. Respondent suffered from the intervening criminal acts of his long-time trusted employee, who stole over \$65,000 from Respondent which caused severe financial strain and confusion related to Respondent's client trust account. Respondent's financial situation has since improved because he has received family assistance.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature. In 2006, Respondent experienced family problems that contributed to his stress.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. Respondent has presented character letters from a variety of individuals in the community attesting to their respective faith in Respondent and his overall honesty. These character references expressed their belief in Respondent's integrity and honesty even with the knowledge of the misconduct and believe that the conduct will not recur. (Std. 1.2(e)(vi).)
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

Respondent has done a sizeable amount of charitable and volunteer work in the community. He currently sits on the Board of Directors for a nonprofit organization called Real Medicine, which provides medical assistance to countries in need. For six years, Respondent served as a Judge Pro Tem for Los Angeles Superior Court. He served 2 years as the President of the Board of Directors for the Center for the Advancement of Nonviolence. Respondent has raised substantial donations and awareness for blind children and orphans. He sponsored a teenage cancer survivor through UCLA. And has helped open a neighborhood yoga studio to help others suffering from stress and depression. Evidence of pro bono work and significant community service is a factor in mitigation. (Std. 1.2(e)(vii); *Rose v. State Bar* (1989) 49 Cal.3d 646, 667; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal.State Bar Ct. Rptr. 511, 521.)

The violation related to Respondent's trust account did not arise from corruption or venality on Respondent's part, but rather from the intervening criminal act of a staff person. (Cf. *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1368.)

Respondent's depression is now under control with the assistance of a therapist who meets with Respondent weekly. (Std. 1.2(e)(viii).) Respondent acted responsibly to replace the money stolen by Calvo with his own funds. Since 2007, Respondent has instituted corrective measures in his office to avoid a recurrence of problems. (*Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 747-748.) Since 2007, Respondent has focused his law practice almost exclusively in the area of crimina law; he has an accountant assisting in his bookkeeping; he now has sufficient staff and a full-time associate to help him manage the practice. Respondent has implemented a monthly reconciliation system with the assistance of a CPA to safeguard the CTA, which supports Respondent's rehabilitation. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312.)

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of TWO YEARS.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of FOUR YEARS, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of 120 DAYS.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

(1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the

probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |  |  |
|--|--|
| <input type="checkbox"/> Substance Abuse Conditions    | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
  
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
  
- (5)  **Other Conditions:**

Attachment language begins here (if any):

**ATTACHMENT TO  
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:       EUGENE WELLINGTON MATTHEWS, 161396  
CASE NUMBERS:         06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315;  
                              07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686;  
                              08-O-11215 – DFM

Respondent admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

**Case No. 06-O-12121 (Davis)**

**FACTS**

1) On September 3, 2002, Mary Davis (Davis) slipped, fell, and broke her ankle at a mall in Torrance, California (the Mall), that was owned and / or operated by Kimco Realty Corporation (Kimco).

2) Davis received medical treatment for her injuries at the Little Company of Mary Hospital (the Hospital) and Beach Cities Transitional Care Unit (Beach Cities).

3) On January 15, 2003, Davis - who has known Respondent since his childhood, hired Respondent to represent her in a personal injury action. She signed a contingency fee agreement.

4) From February 2003 through September 2003, Respondent investigated the personal injury matter.

5) On September 3, 2003, Respondent filed a civil complaint on Davis's behalf in the Los Angeles County Superior Court of California, entitled *Marie Lorrie Davis v. Kimco Realty Corporation, et al.*, case number YC047393 (*Davis v. Kimco*). The complaint alleged personal injury, premises liability, and general negligence causes of actions against Kimco Realty Corporation (Kimco) and Torrance Promenade Mall (the Mall) and a medical malpractice cause of action for orthopaedic injuries against the Hospital, Beach Cities, an orthopaedic surgeon, Dr. Yoshida, and an internist, Dr. Khaleeli.

6) On September 9, 2003, Respondent filed and served a first amended complaint in *Davis v. Kimco*.

7) Between on October 28, 2003 and on November 12, 2003, the respective counsel for the defendants filed and served answers for their respective clients to the first amended complaint in *Davis v. Kimco*.

8) In December 2003, after investigation revealed there was little to no liability on the part of the Mall, Respondent filed a Request for Dismissal of the Mall in *Davis v. Kimco*, which the Superior Court entered as requested.

9) On February 10, 2004, Respondent failed to appear as ordered for a CMC in *Davis v. Kimco*. The Superior Court ordered that the action be submitted to mediation, mediation to be completed by November 4, 2004, and set the trial for November 17, 2004. On February 11, 2004, counsel for Dr. Khaleeli served a Notice of Ruling on the parties in *Davis v. Kimco*. Respondent received the notice.

10) In February 2004, Dr. Khaleeli was dismissed from the action with Davis's consent.

11) By May 2004, Respondent believed after further evaluating the medical malpractice claim and after consulting with three experts, none of which would testify in support of Davis's claim, and, that Davis would not prevail at trial. However, Respondent did not clearly advise Davis of his opinion that she should not take the matter to trial if it did not settle at the mediation.

12) On June 17, 2004, counsel for Dr. Yoshida offered to waive all costs and fees incurred in defense of the action and waive any right to sue for malicious prosecution in exchange for Davis's agreement to dismiss Dr. Yoshida from the lawsuit. Respondent received the offer. Davis did not agree to dismiss him from the lawsuit.

13) In July 2004, counsel for Dr. Yoshida, the Hospital and Beach Cities successfully brought motions for summary judgment in *Davis v. Kimco*. A hearing on the motions was set for October 14, 2004. Respondent received the motions. Respondent did not file oppositions to the motions because he believed he had no meritorious claims to raise in opposition. However, Respondent did not inform Davis that the motions had been filed or that he would not be filing oppositions to the motions.

14) On October 14, 2004, Respondent did not appear for the hearings on the motions in *Davis v. Kimco*. The Superior Court granted summary judgment in favor of the Hospital, Beach

Cities, and Dr. Yoshida finding no triable issue of material fact as to the cause of action for medical negligence.

15) On October 20, 2004, counsel for Dr. Yoshida filed and served Notice of Judgment in favor of Dr. Yoshida in *Davis v. Kimco*. Respondent received the notice.

16) On October 26, 2004, counsel for Kimco, the last remaining defendant, filed and served *motions in limine* in *Davis v. Kimco*. Respondent received the *motions in limine*.

17) On October 27, 2004, the matter went to mediation with the last remaining defendant, Kimco. The mediation failed to produce a settlement.

18) Davis requested that Respondent obtain a continuance of the November 17, 2004 trial due to her ill health. Davis produced a doctor's note to support her request for a continuance.

19) On November 4, 2004, Respondent failed to appear for the FSC and OSC regarding completion of mediation in *Davis v. Kimco*. The Superior Court found that Respondent had failed to complete mediation. The Court issued an OSC re Sanctions for November 17, 2004, and ordered the trial date of November 17, 2004 to stand.

20) On November 8, 2004, counsel for Kimco filed and served a Notice of Ruling at the FSC and OSC re Completion of Mediation and Notice of OSC Why Sanctions Should Not be Issued Against Plaintiff Counsel for Failure to Appear at Hearing in *Davis v. Kimco*. The notice advised that an OSC would take place on November 17, 2004. Respondent received the notice.

21) On Wednesday, November 17, 2004, Respondent filed a motion for trial continuance. The Superior Court granted a request for continuance contingent upon payment of a \$110 court fee by Thursday, November 18, 2004. Respondent did not pay the court fee due to an oversight.

22) On Friday afternoon, November 19, 2004, the Superior Court faxed notice to Respondent and counsel for Kimco that the trial of *Davis v. Kimco* had been continued until November 22, 2004.

23) On Monday, November 22, 2004, Respondent did not appear at the trial and the Court dismissed Davis's complaint.

24) On November 23, 2004, counsel for Kimco filed and served Notice of Dismissal for Failure to Prosecute in *Davis v. Kimco*. Respondent received the notice.

25) On November 23, 2004, counsel for Kimco filed and served Notice of Dismissal for Failure to Prosecute in *Davis v. Kimco*. Respondent received the notice.

26) On November 27, 2004, Davis called Respondent because he had not informed her of the date for the continued trial. Respondent told Davis that *Davis v. Kimco* had been dismissed because he had failed to timely pay a fee for the continuance. Respondent did not inform Davis that she had six months to move to set aside the dismissal or that he would be withdrawing from employment in her case.

### **CONCLUSION OF LAW**

27) By failing to properly withdraw from employment in Davis's case until he could be relieved as her counsel, failing to inform Davis that he was withdrawing from employment in her case; and failing to take any reasonable steps to avoid reasonably foreseeable prejudice to Davis, Respondent acted in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

### **Case No. 06-O-12503 (Ray)**

### **FACTS**

28) In November 2005, Respondent settled a breach of contract and wrongful termination case against California State Employees Association (CSEA) on behalf of his client Helen Ray (Ray) in the amount of \$13,000.

29) On December 14, 2005, counsel for CSEA mailed Respondent a settlement check for Ray in the amount of \$7,835.10, which represented the settlement amount of \$13,000 from which \$5,164.90 had been withheld by CSEA to pay Ray's employment taxes. Respondent received the letter and check.

30) On December 20, 2005, Respondent deposited the check for \$7,835.10 into his CTA.

31) On December 23, 2005, Respondent issued CTA check number 2134 payable to himself for \$6,079.33 in accordance with the terms of the retainer agreement.

32) On January 31, 2006, and without paying any portion of the settlement to Ray, the balance in the CTA fell to negative \$103.47 (-\$103.47).

33) Respondent was notified by the State Bar of the negative balance in his trust account by letter dated February 14, 2006. Respondent acknowledged the negative balance in a letter to the State Bar dated February 28, 2006.

34) On May 17, 2006, the State Bar opened an investigation, Case No. 06-O-12503, pursuant to a complaint filed by Ray (the Ray matter).

35) On June 19, 2006, a State Bar Investigator (Investigator) mailed a letter to Respondent regarding the Ray matter. The letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ray matter by July 3, 2006. Respondent received the letter.

36) On August 2, 2006, Respondent prepared a "Settlement Breakdown" for the Ray matter. After subtracting Respondent's fees and costs from the \$7,835.10, Respondent was required to maintain in his CTA the sum of \$1,755.77 on behalf of Ray.

37) On August 2, 2006, Respondent issued CTA check number 2183 payable to Ray for \$1,755.77. Ray received the check.

38) On August 2, 2006, Respondent faxed and mailed a letter to the Investigator, along with a copy of the front side of the checks to Respondent and Ray. The letter indicated, in pertinent part, that:

From the funds that were received, I issued a check to my firm for the legal services rendered. *I held the balance in trust of the funds in trust [sic] in case I had to fly back to Sacramento to fight to obtain the balance of the settlement.* (Emphasis added.)

39) The representation in the August 2, 2006 letter that the balance of the funds had remained in trust was not accurate. Respondent did not check his records for accuracy before preparing his letter to the State Bar, and therefore acted with recklessness by providing the State Bar with a letter that contained an untrue statement of fact.

40) Between September 1, 2005 and August 24, 2006, Respondent maintained a trust account at Union Bank of California (Union Bank), Account No. ending in xxxxxxx8322 (the CTA).

41) Between on or before September 1, 2005 and on or after August 24, 2006, Respondent deposited client funds into his CTA.

42) In 2006, Julio Calvo (Calvo), Respondent's paralegal from 2002 through 2007, referred Jose Rodriguez to Respondent to handle a personal injury matter. The Rodriguez case quickly settled for \$100,000.

42) On June 30, 2006, Respondent deposited a check for \$100,000 into his CTA. The check was made payable to "Jose Rodriguez, a Single Man and Eugene Wellington Matthews Attorney at Law." The check reflected the "Date of Occurrence" as "8/8/05."

43) On July 18, 2006, Respondent issued CTA check number 2170 payable to Calvo for \$10,000, as remuneration for having made the referral of the case to him. The memorandum section of the check indicated "Jose Rodriguez D.A. 8/8/05."

44) Prior to giving the payment to Calvo, Respondent contacted the ethics hotline and performed some legal research (where he could find no directional case law) and erroneously concluded that Rules of Professional Conduct subparagraph (B) of rule 1-320 was applicable, rather than subparagraph (A).

### **CONCLUSIONS OF LAW**

45) By not maintaining at least \$1,755.77 received on behalf of Ray in his CTA, Respondent failed to maintain client funds in a trust account in willful violation of Rules of Professional Conduct, rule 4-100(A).

46) By providing the State Bar with a response to an investigation that contained an untrue statement of fact, without first checking the accuracy of the information he was providing, Respondent was reckless in his duty to cooperate with a State Bar investigation, in willful violation of Business & Professions Code, section 6068(i).

47) By issuing CTA check 2170 to Calvo for 10% of the \$100,000 settlement for Jose Rodriguez, Respondent shared legal fees with a person who is not a lawyer in willful violation of Rules of Professional Conduct, rule 1-320(A).

### **Case No. 07-O-10029 (Oses)**

### **FACTS**

48) On December 2, 2005, Maria S. Oses (Oses) was involved in a two-car auto accident with Alexander A. Morales (Morales). Oses's automobile was insured by Geico, while Morales's automobile was insured by the Auto Club.

49) On December 20, 2005, Oses hired Respondent to represent her in a claim against Morales. Respondent immediately mailed a letter of representation to the Auto Club. The Auto Club received the letter.

50) On December 20, 2005, Oses hired Respondent to represent her in a claim against Morales. Respondent immediately mailed a letter of representation to the Auto Club. The Auto Club received the letter.

51) On March 14, 2006, Oses completed her medical treatment for injuries caused by the auto accident.

52) Between May 16, 2006 and October 25, 2006, Oses called Respondent's office weekly and left messages with his staff requesting status reports on her case. Respondent received the messages.

53) Respondent did not respond to the messages or otherwise communicate with Oses until the end of November 2006.

### **CONCLUSION OF LAW**

54) By failing to respond to Oses's requests for a status update between May 16, 2006 and October 25, 2006, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code, section 6068(m).

### **Case No. 07-O-10315 (Duncan)**

### **FACTS**

55) On February 9, 2001, Thomas Duncan (Duncan), Susan Spreuer, Eric Zetterberg, and Susan Jones (collectively the Plaintiffs) were on board a sailing vessel off the coast of California. Their ship began to sink and the Plaintiffs contacted a business known as Vessel Assist to rescue them and their ship. Vessel Assist told the Plaintiffs that it would dispatch a vessel to assist them and their ship, but its vessel failed to arrive in time, and the Plaintiffs' ship sank.

56) In December of 2002, the Plaintiffs hired Respondent to represent them in a lawsuit against Vessel Assist.

57) On February 7, 2003, Respondent filed and served a complaint in the Los Angeles County Superior Court of the State of California, entitled *Thomas Duncan, Susan Spreuer, Eric Zetterberg, Susan Jones, v. Vessel Assist, Inc, Vessel Assist Association of America, Western Maritime dba Vessel Assist San Diego, et al.*, Case No. NC033644 (*Vessel Assist I*). The

complaint alleged negligence and violation of Business & Professions Code section 17200 by advertising, inter alia, that the defendants would “rapidly assist vessels in distress.”

58) During discovery the Plaintiffs learned that Vessel Assist made representations that all rescue vessel captains were coast guard certified. This was false.

59) On November 13, 2003, mediation was conducted in *Vessel Assist I*. The Plaintiffs agreed to settle *Vessel Assist I* for \$213,497. They also agreed to pay \$5,000 per person out of the settlement for advance attorney fees and costs to Respondent to fund a second lawsuit against Vessel Assist for false advertising.

60) On December 4, 2003, the Plaintiffs executed a Settlement Agreement and Release of All Claims in *Vessel Assist I*, prepared by counsel for Vessel Assist and Western Maritime.

61) On December 17, 2003, Respondent filed and served a Request for Dismissal of the Plaintiffs’ complaint in *Vessel Assist I*.

62) On January 16, 2004, Respondent’s office mailed a letter to the Plaintiffs enclosing settlement checks and a settlement breakdown. The Plaintiffs received the letter, settlement breakdown, and settlement checks.

63) On April 27, 2005, Respondent filed and served a complaint in the Superior Court entitled *Thomas Duncan, Susan Spreuer, Eric Zetterberg, Susan Jones, v. Vessel Assist, Inc, dba Vessel Assist Association of America*, Case No. NC036902 (*Vessel Assist II*). The complaint alleged that Vessel Assist violated Business & Professions Code section 17200 by falsely advertising that its vessels and crews were qualified by the U.S. Coast Guard. The complaint alleged violations continuing after the date of the settlement in *Vessel Assist I*.

64) Shortly thereafter, the law with respect to standing to sue in lawsuits brought pursuant to Business and Professions Code section 17200 changed and no longer permitted private persons to sue on behalf of the general public for false advertising. After the law changed, a named party had to show actual reliance upon the false advertisement and show that he or she suffered injury-in-fact in order to have standing to sue. Respondent advised the Plaintiffs of the change in law and the consequences of this change on the viability of *Vessel Assist II*.

65) Plaintiffs wanted to continue to pursue the cause of action. The Plaintiffs represented to Respondent that they would try to locate other individuals who were harmed by the false

advertising and could be substituted into the case as the lead plaintiffs in order to continue prosecuting the case against Vessel Assist. Ultimately they did not find anyone with standing to join *Vessel Assist II*. For this reason, Respondent determined that he could not continue to prosecute *Vessel Assist II*.

66) On June 27, 2005, counsel for Vessel Assist filed and served a Demurrer and a Motion to Strike in *Vessel Assist II*. The Demurrer was based on Plaintiffs' lack of standing to sue. The Motion to Strike sought to strike the demands for punitive damages and attorney fees. The pleadings listed a hearing date of July 26, 2005. Respondent received the Demurrer and Motion to Strike. Respondent had no basis to file oppositions to either, and therefore did not do so.

67) On July 19, 2005, counsel for Vessel Assist filed and served replies in support of the Demurrer and Motion to Strike in *Vessel Assist II* stating that Respondent had not filed any opposition and that the Demurrer and Motion to Strike should be granted. The replies listed the hearing date of July 26, 2005. Respondent received the replies.

68) On July 26, 2005, Respondent did not appear for the hearings on the Demurrer and Motion to Strike in *Vessel Assist II*. The Superior Court granted the Demurrer with 20 days leave to amend and the Motion to Strike without leave to amend. Respondent received the notice.

69) Respondent did not file an amended complaint within 20 days or anytime thereafter and on September 26, 2005, the Superior Court dismissed the case, without prejudice.

70) Respondent did not inform the Plaintiffs that *Vessel Assist II* had been dismissed.

#### **CONCLUSION OF LAW**

71) By failing to inform the Plaintiffs that he would let the matter be dismissed, and by failing to inform the Plaintiffs of when the matter was dismissed, Respondent failed to keep clients reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

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**Case No. 07-O-11254 (Ren)**

**FACTS**

72) On February 21, 2007, the State Bar opened an investigation, Case No. 07-O-11254, pursuant to a complaint filed by Wendy Ren (the Ren matter.)

73) On May 22, 2007, a State Bar Investigator (Investigator) wrote a letter to Respondent regarding the Ren matter. The letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ren matter by June 6, 2007. The letter was sent to Respondent at his State Bar membership records address. Respondent received the letter.

74) On June 7, 2007, Respondent mailed a letter to the Investigator regarding the Ren matter requesting "additional time to respond." The State Bar received the letter.

75) On June 11, 2007, the Investigator wrote a letter to Respondent regarding the Ren matter advising Respondent that Respondent's time to respond had been extended until June 25, 2007. The letter was mailed to Respondent at his State Bar membership records address. Respondent received the letter.

76) Respondent did not provide a response after requesting an extension of time to respond.

**CONCLUSION OF LAW**

77) By not providing a written response to the allegations in the Ren matter, Respondent failed to cooperate and participate in a disciplinary investigation, in willful violation of Business and Professions Code, section 6068(i).

**Case No. 07-O-13169 (Mata)**

**FACTS**

78) On May 18, 2004, Ana L. Mata's (Mata) 11-year old son, Allen Torres Mata (Allen), was injured by a substitute teacher employed by the Los Angeles Unified School District (LAUSD).

79) On May 21, 2004, Mata hired Respondent to represent Allen in a claim against the LAUSD because of the incident. Mata signed a retainer agreement.

80) On June 22, 2004, LAUSD mailed a letter to Respondent informing him that it had referred Allen's claim to a claims adjuster, Carl Warren and Company (Carl Warren). Respondent received the letter.

81) On July 2, 2004, a Claims Adjuster for Carl Warren (Claims Adjuster) mailed a letter to Respondent requesting documents and information concerning Allen's claim. Respondent received the letter.

82) On August 4, 2004, Respondent's office sent a letter to Carl Warren advising that its investigation was still in progress. Carl Warren received the letter.

83) Between July and November 2004, Carl Warren conducted its own investigation of the matter.

84) On November 15, 2004, Respondent mailed a letter to Carl Warren demanding \$25,000 to settle Allen's claim for damages. Carl Warren received the letter.

85) On January 11, 2006, a paralegal in Respondent's office, called Carl Warren to discuss Allen's claim for damages. The paralegal told the Claims Adjuster that Respondent was demanding \$2,500 to settle Allen's claim. The adjuster offered \$1,000 to settle Allen's claim.

86) Respondent did not timely inform Mata that Carl Warren had offered \$1,000 to settle Allen's claim.

87) On May 18, 2006, the two-year statute of limitations to file a civil complaint against LAUSD for personal injury on behalf of Allen expired. Respondent did not file a lawsuit prior to the statute expiring.

88) Respondent did not inform Mata that the two-year statute of limitations to file a civil complaint for personal injury on behalf of Allen was about to expire or that it had expired.

89) In June of 2006, Mata called and spoke with a paralegal in Respondent's office. The paralegal told Mata that LAUSD made a \$1,000 offer to settle Allen's claim. Mata told the paralegal she would accept the offer. That information was not communicated to Carl Warren.

90) On October 30, 2006, Respondent mailed a letter to Mata advising her in writing of LAUSD's \$1,000 offer to settle. Respondent recommended that she accept the offer. The letter requested that Mata inform Respondent if she accepted the offer and warned her that they only had two years to file a civil complaint against LAUSD.

91) Between in the beginning of November of 2006 and on April 10, 2007, Mata called Respondent's office to accept the offer made by LAUSD.

92) On April 10, 2007, Mata mailed a letter to Respondent advising Respondent that she wished to accept the \$1,000 offer. Respondent received the letter.

93) Neither Respondent nor anyone from his office contacted Carl Warren at any time to accept the \$1,000 offer to settle Allen's claim against LAUSD.

94) Although the statute of limitations for bringing an action against LAUSD expired, the statute of limitations for bringing a lawsuit against the individual teacher remains tolled until Allen reaches the age of majority, in early 2012.

95) At no time did Respondent inform Mata that he had not communicated her acceptance of the \$1,000 settlement offer or that he would not be performing any additional services on behalf of her son, nor did Respondent take steps to avoid reasonably foreseeable prejudice to Mata and her son.

#### **CONCLUSION OF LAW**

96) By failing to timely inform Mata of the \$1,000 offer to settle Allen's claim prior to the expiration of the statute, by failing to convey Mata's acceptance of the \$1,000 settlement offer and finalize the settlement of Allen's claim, by failing to file a lawsuit prior to the expiration of the 2-year statute of limitations in order to preserve Allen's ability to pursue his claim against LAUSD, by failing to keep Mata fully informed as to the status of the matter and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client Respondent improperly withdrew from employment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

#### **Case No. 08-O-10686 (Del Orbe)**

#### **FACTS**

97) On June 4, 2007, Martin Del Orbe (Del Orbe) filed an in *pro per* Petition to Establish Parental Relationship, Child Support, Child Custody, Visitation in the Superior Court of California, County of Los Angeles, in a matter entitled *Martin Del Orbe v. Maribel Servin*, Case No. LF003943 (*Del Orbe v. Servin*).

98) On June 13, 2007, Del Orbe hired Respondent to represent him in *Del Orbe v. Servin*. Del Orbe signed a retainer agreement and paid Respondent \$5,000 in advanced attorney fees and costs and charged it to a credit card.

99) Respondent did not file a substitution of attorney substituting himself in place of Del Orbe nor did he perform any legal services on Del Orbe's behalf after he was retained despite several calls made by Del Orbe to Respondent's office between July 2007 through September 2007, requesting an update on the status of his case.

100) In September of 2007, Del Orbe met with an employee in Respondent's office, and requested a refund of all fees paid since Respondent had not performed any work on his case.

101) On December 11, 2007, Del Orbe faxed a letter to Respondent terminating Respondent's services and demanding a refund of the \$5,000 advanced attorney fees. Respondent received the fax.

102) On February 6, 2008, Del Orbe faxed another letter to Respondent in which he advised Respondent of his prior letter faxed on December 11, 2007 terminating Respondent's services and demanding a refund. In the February 6, 2008 letter, Del Orbe made another demand for a full refund of fees paid and warned Respondent that he would file a complaint with the State Bar if the refund was not provided. Respondent received the fax.

103) Respondent did not earn any portion of the advanced attorney fees paid by Del Orbe.

104) Respondent did not refund any of the \$5,000 in advanced attorney fees paid by Del Orbe or otherwise respond to Del Orbe's requests for a refund.

105) On February 13, 2008, the State Bar opened an investigation, Case No. 08-O-10686, pursuant to a complaint filed by Del Orbe (the Del Orbe matter.)

106) On March 18, 2008 and April 3, 2008, a State Bar Investigator (Investigator) wrote letters to Respondent regarding the Del Orbe matter. The letters were mailed to Respondent at his State Bar membership records address. Respondent received both of the letters.

107) The Investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Del Orbe matter by April 1, 2008 and April 17, 2008, respectively.

108) Respondent did not provide a written response to the Investigator or otherwise communicate with the State Bar.

### **CONCLUSIONS OF LAW**

109) By failing to substitute into *Del Orbe v. Servin* and/or take any legal action on behalf of Del Orbe, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

110) By not refunding the \$5,000 in advanced attorney's fees paid by Del Orbe that he had not earned, Respondent failed to refund unearned fees in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

111) By not providing a written response to the allegations in the Del Orbe matter or otherwise cooperating in the investigation of the Del Orbe matter, Respondent failed to cooperate and participate in a disciplinary investigation in willful violation of Business and Professions Code, section 6068(i).

### **Case No. 08-O-11215 (Flannagan)**

### **FACTS**

112) On March 14, 2008, the State Bar opened an investigation, Case No. 08-O-11215 (the Flannagan matter), pursuant to a complaint filed by Susan Flannagan.

113) On April 14, 2008 and April 30, 2008, a State Bar Investigator (Investigator) wrote letters to Respondent regarding the Flannagan matter. The letters were mailed to Respondent at his State Bar membership records address. Respondent received both letters.

114) The Investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Flannagan matter by April 28, 2007 and May 14, 2008, respectively.

115) Respondent did not provide a written response to the Investigator or otherwise communicate with the Investigator regarding the Flannagan matter.

### **CONCLUSION OF LAW**

116) By not responding to the specified allegations of misconduct in the Flannagan matter or otherwise cooperating in the investigation of the Flannagan matter, Respondent failed

to cooperate and participate in a disciplinary investigation in willful violation of Business and Professions Code, section 6068(i).

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.**

The parties waive any variance between the Notice of Disciplinary Charges filed on November 25, 2008 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

**AUTHORITIES.**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provides for reproof or suspension for failure to perform or communicate. Standard 2.3 provides that a violation of moral turpitude shall result in suspension or disbarment and a three-month actual suspension where a CTA dip is concerned. Here, disbarment is not necessary to serve the purposes of attorney discipline. Standard 2.6 provides for suspension or disbarment for a violation of section 6068(i) of the Business and Professions Code. Standard 2.10 provides for reproof or suspension for a violation of a rule not set out in the standards. For a violation of rule 1-320(A) of the Rules of Professional Conduct, Respondent's conduct was not as egregious other cases involving splitting fees with non attorneys. Here it was a one-time situation and therefore, the risk of non-layers elevating the personal profit motive above the interests of the clients which goes to the heart of the reason for the rule is low. (Cf. *In re Arnoff* (1978) 22 Cal.3d 740, 748, fn. 4.)

In *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, an attorney received two-years stayed suspension, three-years probation with conditions including, 90-days actual suspension and a \$3,607 restitution requirement where he was found culpable for 12 ethical violations in 5 client matters. In the first matter, the attorney failed to promptly refund an unearned fee; in the second matter, the attorney failed to communicate, unintentionally failed to perform, improperly withdrew as counsel, and failed to promptly return the client's file; in the third matter, the attorney failed to communicate, committed an act of moral turpitude by inducing a client to withdraw a disciplinary complaint, failed to return an unearned fee promptly to the client and failed to pay settlement proceeds promptly to the client; in the fourth matter, the attorney failed to deposit funds into his CTA; and in the fifth matter, the attorney committed another act of moral turpitude by inducing a client to withdraw a disciplinary complaint. In

aggravation, the attorney engaged in multiple acts of misconduct and failed to demonstrate atonement for misconduct as well as interfered with the investigation in the first matter. In mitigation, his absence of any prior disciplinary record, general honesty and integrity as attested to seven character witnesses and extensive volunteer work were given significant weight.

In *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, the attorney received two-years stayed suspension, two-years probation, and 90-days actual suspension where he was found culpable for 8 ethical violations in 8 client matters. The attorney in *Kaplan* failed to communicate in five matters, failed to sign substitution of attorney forms promptly and/or forward client files in seven matters, failed to perform services in three matters, failed to endorse and return settlement drafts of former clients promptly in two matters and failed to pay court-ordered sanctions. There was no charge of moral turpitude. In aggravation, he committed multiple acts of misconduct and significantly harmed a client. In mitigation, he had no prior record of discipline for nine years, experienced marital difficulties at the time of his misconduct, and corrected the poor law office practices underlying much of his wrongdoing.

Here, Respondent's misconduct is greater than that in *Lais* and *Kaplan* because it involved more client matters and greater harm to the clients, however, Respondent has less aggravation and greater mitigation than the attorney in *Lais*. Therefore, slightly more actual suspension is appropriate.

Thus, 120 days of actual suspension is sufficient to serve the purposes of attorney discipline.

#### **DISMISSALS.**

The parties respectfully request the Court dismiss 31 alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-12121	One	Business and Professions Code section 6068(c)
06-O-12121	Two	Business and Professions Code section 6103
06-O-12121	Three	Rules of Professional Conduct, rule 3-110(A)
06-O-12121	Four	Business and Professions Code section 6068(m)
06-O-12503	Six	Rules of Professional Conduct, rule 4-100(A)
06-O-12503	Seven	Business and Professions Code section 6106
06-O-12503	Nine	Rules of Professional Conduct, rule 4-100(A)
06-O-12503	Eleven	Business and Professions Code section 6106
07-O-10029	Thirteen	Rules of Professional Conduct, rule 3-110(A)
07-O-10029	Fifteen	Rules of Professional Conduct, rule 3-110(A)
07-O-10029	Sixteen	Business and Professions Code section 6106
07-O-10029	Seventeen	Rules of Professional Conduct, rule 3-700(A)(2)
07-O-10029	Eighteen	Business and Professions Code section 6068(i)
07-O-10315	Nineteen	Rules of Professional Conduct, rule 3-110(A)
07-O-10315	Twenty	Business and Professions Code section 6106

07-O-10315	Twenty-One	Rules of Professional Conduct, rule 3-700(D)(2)
07-O-10315	Twenty-Two	Rules of Professional Conduct, rule 3-700(A)(2)
07-O-10315	Twenty-Three	Business and Professions Code section 6068(i)
07-O-12811	Twenty-Five	Rules of Professional Conduct, rule 3-110(A)
07-O-12811	Twenty-Six	Business and Professions Code section 6068(m)
07-O-12811	Twenty-Seven	Business and Professions Code section 6106
07-O-12811	Twenty-Eight	Rules of Professional Conduct, rule 3-700(D)(2)
07-O-12811	Twenty-Nine	Rules of Professional Conduct, rule 3-700(A)(2)
07-O-13169	Thirty	Rules of Professional Conduct, rule 3-110(A)
07-O-13169	Thirty-One	Business and Professions Code section 6068(m)
08-O-10686	Thirty-Four	Business and Professions Code section 6068(m)
08-O-10686	Thirty-Six	Rules of Professional Conduct, rule 3-700(A)(2)
08-O-11215	Thirty-Eight	Rules of Professional Conduct, rule 3-110(A)
08-O-11215	Thirty-Nine	Rules of Professional Conduct, rule 3-700(D)(1)
08-O-11215	Forty	Rules of Professional Conduct, rule 3-700(D)(2)
08-O-11215	Forty-One	Rules of Professional Conduct, rule 3-700(A)(2)

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was January 11, 2010.

### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 11, 2010, the estimated prosecution costs in this matter are approximately \$7,987.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs that will be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings. It is also noted that if Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision(c), the remaining balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 286). The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **STATE BAR ETHICS SCHOOL.**

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent will receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

In the Matter of  
Eugene Wellington Matthews

Case number(s):  
06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315;  
07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686;  
08-O-11215

A Member of the State Bar

### Law Office Management Conditions

- a.  Within        days/        months/**TWO** years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within        days/        months/**THREE** years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **4 HOURS PER YEAR FOR THE FIRST THREE YEARS OF PROBATION; FOR A TOTAL OF 12** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for **TWO** year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

In the Matter of  
Eugene Wellington Matthews

Case number(s):  
06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315;  
07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686;  
08-O-11215

## Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition-
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **THREE** times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for \_\_\_\_\_ days or \_\_\_\_\_ months or **FOUR** years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

In the Matter of  
Eugene Wellington Matthews

A Member of the State Bar

Case number(s):

06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315;  
07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686;  
08-O-11215

## Financial Conditions

### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
MARTIN DEL ORBE	\$5,000.00	09/01/2007

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
MARTIN DEL ORBE	\$417.00 of principal, plus associated interest and applicable costs, if any.	Payments are due Quarterly, no later than December 1 (proof to be submitted with January 10 Quarterly Reports), March 1 (proof to be submitted with April 10 Quarterly Reports), June 1 (proof to be submitted with July 10 Quarterly Reports), & September 1 (proof to be submitted with October 10 Quarterly Reports).

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

		<b>Payment Frequency continued:</b>
		<b>Respondent must make any and all necessary final payments in order to complete the payment of total restitution, including interest, costs and applicable fees, if any, in full, within three years of the effective date of the Supreme Court Order in this matter.</b>

**c. Client Funds Certificate**

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
  - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

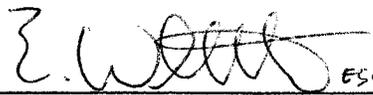
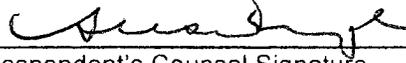
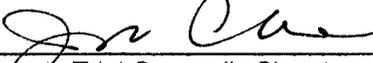
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of Eugene Wellington Matthews	Case number(s): 06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315; 07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686; 08-O-11215
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>January 19, 2010</u> Date	 Respondent's Signature	<u>Eugene Wellington Matthews</u> Print Name
<u>1/19/10</u> Date	 Respondent's Counsel Signature	<u>Susan Margolis</u> Print Name
<u>1/22/2010</u> Date	 Deputy Trial Counsel's Signature	<u>Jean Cha</u> Print Name

(Do not write above this line.)

In the Matter Of <b>EUGENE WELLINGTON MATTHEWS</b>	Case Number(s): <b>06-O-12121; 06-O-12503; 07-O-10029; 07-O-10315; 07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686; 08-O-11215</b>
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**ORDER**

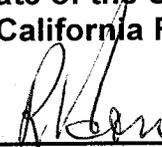
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

- 1) Paragraph 50 on page 14 is deleted, as duplicative of paragraph 49.
- 2) On page 27, subparagraph b, the "minimum payment amount" is changed to read "\$417.00, paid monthly, until payment of all outstanding principal and interest."
- 3) On page 25, subparagraph a., "two years" is deleted. In its place "sixty days" is inserted.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

1/28/10  
Date

  
Richard A. Honn  
Judge of the State Bar Court

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 2, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

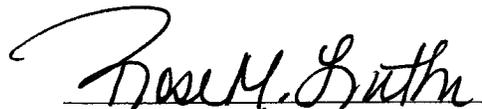
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN L. MARGOLIS, ESQ.  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JEAN CHA, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 2, 2010.



Rose Luthi  
Case Administrator  
State Bar Court